

AMENDED IN SENATE MAY 2, 1996
AMENDED IN SENATE APRIL 10, 1996

SENATE BILL

No. 2097

Introduced by Senator Haynes

February 23, 1996

~~An act to repeal and add Sections 51.2, 51.3, and 51.4 of An act to amend Section 11010.05 of the Business and Professions Code, and to amend Sections 51.2, 51.3, and 51.4 of, and to add Sections 51.10, 51.11, and 51.12 to, the Civil Code, relating to civil rights.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 2097, as amended, Haynes. Civil rights: senior housing.

(1) *Existing law provides that a person who proposes to create a senior citizen housing development, through phased development and marketing of subdivision interests may apply for and obtain a public report for a phase of the development, even though the phase itself will not include a sufficient number of dwelling units to qualify as a senior citizen housing development.*

This bill would limit the applicability of this provision to persons who propose to create a senior housing development before January 1, 1997.

(2) Existing provisions of the Unruh Civil Rights Act, with certain exceptions, prohibit various forms of arbitrary discrimination by business establishments. One of the exceptions to the prohibitions of this act is for senior housing meeting prescribed criteria, including the requirement that

the accommodations are designed to meet the physical and social needs of senior citizens, except as specified.

This bill would ~~delete~~ *provide that* the requirement that the accommodations are designed to meet these needs *does not apply to the County of Riverside.*

~~(2)–~~

(3) Existing law provides that where accommodations constructed before February 8, 1982, are not specially designed to meet the physical and social needs of seniors but meet other specified criteria for senior citizen housing, a business establishment may establish and preserve that housing for senior citizens until January 1, 2000, in accordance with that criteria.

This bill would ~~delete~~ *provide that* these provisions *do not apply to the County of Riverside.*

~~(3)–~~

(4) Existing law permits the establishment and preservation of specially designed and accessible housing for senior citizens, as specified. Existing law defines, for purposes of these provisions, a senior citizen housing development as a residential development developed, substantially rehabilitated, or substantially renovated for senior citizens consisting of (a) at least 70 dwelling units built before January 1, 1996, or 150 dwelling units built on or after January 1, 1996, in a metropolitan statistical area with a population of at least 1,000 residents per square mile or 1,000,000 total residents, (b) at least 100 dwelling units in a metropolitan statistical area with a population not to exceed 999 residents per square mile and not to exceed 399,999 total residents, or (c) at least 35 dwelling units in any other area.

This bill would ~~revise and recast this definition to provide that, among other things with respect to the County of Riverside, enact special provisions defining~~ a senior citizen housing development ~~means to mean~~ a residential development developed *with more than 20 units* as a senior community by its developer, zoned as a senior community by local governmental entities, or characterized or qualified as a senior community as specified. It also would expand the definition of who is a qualified permanent resident for purposes of ~~the section~~ *these provisions.*



The bill would make a statement of legislative intent in this regard.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 51.2 of the Civil Code is~~
2 ~~repealed.~~
3 ~~SEC. 2. Section 51.2~~
4 *SECTION 1. Section 11010.05 of the Business and*
5 *Professions Code is amended to read:*
6 11010.05. A person who proposes to create a senior
7 citizen housing development, as defined in ~~Section~~
8 *Sections 51.3 and 51.11 of the Civil Code, before January*
9 *1, 1997, through phased development and marketing of*
10 *subdivision interests, may apply for and obtain a public*
11 *report for a phase of the subdivision as part of a senior*
12 *citizen housing development even though the phase itself*
13 *will not include a sufficient number of dwelling units to*
14 *qualify as a senior citizen housing development. The*
15 *applicant shall submit the following statement, signed*
16 *under penalty of perjury, with the application for a public*
17 *report:*
18 (a) A statement of the applicant's intent that the
19 subdivision phase shall ultimately be part of a senior
20 citizen housing development.
21 (b) An explanation of the annexation of the
22 subdivision phases for the creation of the senior citizen
23 housing development.
24 (c) Evidence satisfactory to the department that the
25 applicant owns or controls real property capable of being
26 subdivided and annexed to the original subdivision to
27 provide a sufficient number of dwelling units to satisfy the
28 numerical requirements for a senior citizen housing
29 development.
30 *SEC. 2. Section 51.2 of the Civil Code is amended to*
31 *read:*

1 51.2. (a) Section 51 shall be construed to prohibit a
2 business establishment from discriminating in the sale or
3 rental of housing based upon age. Where
4 accommodations are designed to meet the physical and
5 social needs of senior citizens, a business establishment
6 may establish and preserve that housing for senior
7 citizens, pursuant to Section 51.3, except housing as to
8 which Section 51.3 is preempted by the prohibition in the
9 federal Fair Housing Amendments Act of 1988 (P.L.
10 100-430) and implementing regulations against
11 discrimination on the basis of familial status. Where
12 accommodations constructed before February 8, 1982,
13 meet the criteria for senior citizen housing specified in
14 Section 51.4, a business establishment may establish and
15 preserve that housing for senior citizens until January 1,
16 2000, in accordance with Section 51.4.

17 (b) This section is intended to clarify the holdings in
18 *Marina Point, Ltd. v. Wolfson* (1982), 30 Cal. 3d 72, and
19 *O'Connor v. Village Green Owners Association* (1983), 33
20 Cal. 3d 790.

21 (c) *This section shall not apply to the County of*
22 *Riverside.*

23 SEC. 3. *Section 51.3 of the Civil Code is amended to*
24 *read:*

25 51.3. (a) The Legislature finds and declares that this
26 section is essential to establish and preserve specially
27 designed accessible housing for senior citizens. There are
28 senior citizens who need special living environments and
29 services, and find that there is an inadequate supply of
30 this type of housing in the state.

31 (b) The Legislature finds and declares that different
32 age limitations for senior citizen housing are appropriate
33 in recognition of the size of a development in relationship
34 to the community in which it is located.

35 (c) For the purposes of this section, the following
36 definitions apply:

37 (1) "Qualifying resident" or "senior citizen" means a
38 person 62 years of age or older, or 55 years of age or older
39 in a senior citizen housing development.

(2) “Qualified permanent resident” means a person who meets all of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(C) Has an ownership interest in, or is in expectation of an ownership interest in, the dwelling unit within the housing development that limits occupancy, residency, or use on the basis of age.

(3) “Senior citizen housing development” means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that meets any of the following requirements:

(A) At least 70 dwelling units, built prior to January 1, 1996, or at least 150 dwelling units built on or after January 1, 1996, in a metropolitan statistical area, as defined by the Federal Committee on Metropolitan Statistical Areas, with a population of at least 1,000 residents per square mile or 1,000,000 total residents, based on the 1990 census.

(B) At least 100 dwelling units in a metropolitan statistical area, as defined by the Federal Committee on Metropolitan Statistical Areas, with a population not to exceed 999 residents per square mile and not to exceed 399,999 total residents, based on the 1990 census.

(C) At least 35 dwelling units in any other area.

The number of dwelling units within a development includes all dwelling units developed, whether in single or multiple phases. Developments commenced after July 1, 1986, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code.

(4) “Dwelling unit” or “housing” means any residential accommodation other than a mobilehome.

(5) “Cohabitant” refers to persons who live together as husband and wife.

1 (6) “Permitted health care resident” means a person
2 hired to provide live-in, long-term, or terminal health
3 care to a qualifying resident.

4 (d) The covenants, conditions, and restrictions or
5 other documents or written policy shall not limit
6 occupancy, residency, or use on the basis of age more
7 proscriptively than to require that one person in
8 residence in each dwelling unit may be required to be a
9 senior citizen and that each other resident in the same
10 dwelling unit may be required to be a qualified
11 permanent resident.

12 (e) The covenants, conditions, and restrictions or
13 other documents or written policy shall permit
14 temporary residency, as a guest of a senior citizen or
15 qualified permanent resident, by a person of less than 45
16 years of age for periods of time, not less than 60 days in any
17 year, that are specified in the covenants, conditions, and
18 restrictions or other documents or written policy.

19 (f) Upon the death or dissolution of marriage, or upon
20 hospitalization, or other prolonged absence of the
21 qualifying resident, any qualified permanent resident
22 shall be entitled to continue his or her occupancy,
23 residency, or use of the dwelling unit as a permitted
24 resident.

25 (g) The condominium, stock cooperative,
26 limited-equity housing cooperative, planned
27 development, or multiple-family residential rental
28 property shall have been developed for, and initially been
29 put to use as, housing for senior citizens, or shall have
30 been substantially rehabilitated or renovated for, and
31 immediately afterward put to use as, housing for senior
32 citizens, as provided in this section.

33 (h) The covenants, conditions, and restrictions or
34 other documents or written policies applicable to any
35 condominium, stock cooperative, limited-equity housing
36 cooperative, planned development, or multiple-family
37 residential property that contained age restrictions on
38 January 1, 1984, shall be enforceable only to the extent
39 permitted by this section, notwithstanding lower age
40 restrictions contained in those documents or policies.

1 (i) Any person who has the right to reside in, occupy,
2 or use the housing or an unimproved lot subject to this
3 section on January 1, 1985, shall not be deprived of the
4 right to continue that residency, occupancy, or use as the
5 result of the enactment of this section.

6 (j) The covenants, conditions, and restrictions or other
7 documents or written policy of the senior citizen housing
8 development shall permit the occupancy of a dwelling
9 unit by a permitted health care resident during any
10 period that the person is actually providing live-in,
11 long-term, or hospice health care to a qualifying resident
12 for compensation.

13 (k) *Notwithstanding any other provision of this*
14 *section, this section shall not apply to the County of*
15 *Riverside.*

16 *SEC. 4. Section 51.4 of the Civil Code is amended to*
17 *read:*

18 51.4. (a) The Legislature finds and declares that the
19 requirements for senior housing under ~~Section~~ Sections
20 51.2 and 51.3 are more stringent than the requirements
21 for that housing under the federal Fair Housing
22 Amendments Act of 1988 (Public Law 100-430) in
23 recognition of the acute shortage of housing for families
24 with children in California. The Legislature further finds
25 and declares that the special design requirements for
26 senior housing under Sections 51.2 and 51.3 may pose a
27 hardship to some housing developments which were
28 constructed before the decision in *Marina Point Ltd. v.*
29 *Wolfson* (1982), 30 Cal. 3d 72. The Legislature further
30 finds and declares that the requirement for specially
31 designed accommodations in senior housing under
32 Section 51.2 and 51.3 provides important benefits to
33 senior citizens and also ensures that housing exempt from
34 the prohibition of age discrimination is carefully tailored
35 to meet the compelling societal interest in providing
36 senior housing. Therefore, it is the intent of the
37 Legislature to permit a narrow, time-limited exception to
38 the requirement that senior housing be specially
39 designed.

1 (b) A housing development constructed before
2 February 8, 1982, shall be exempt from Section 51 to the
3 extent specified in Section 51.2 if (1) it meets the
4 requirements of Sections 51.2 and 51.3, other than the
5 requirement that the housing be specially designed to
6 meet the physical and social needs of senior citizens, (2)
7 it is not practicable to meet that requirement in the
8 relevant geographic area where the housing
9 development is located, and (3) the housing
10 development is necessary to provide important housing
11 opportunities for senior citizens. As used in this section,
12 “relevant geographic area” has the same meaning as that
13 term is used in Section 100.304 of Title 24 of the Code of
14 Federal Regulations.

15 (c) In any action under Section 51, the exemption
16 under this section shall be sustained only if it is
17 demonstrated through credible and objective evidence
18 that application of a requirement for specially designed
19 accommodations to meet the physical and social needs of
20 senior citizens would result in depriving senior citizens in
21 the relevant geographic area of needed and desired
22 housing. The factors to be considered by the court in
23 determining the applicability of this section shall include,
24 but not be limited to, all of the following:

25 (1) Whether the owner or manager of the housing
26 facility has endeavored to provide specially designed
27 accommodations to meet the physical and social needs of
28 senior citizens persons either directly or by some other
29 entity. Demonstrating that these accommodations would
30 be expensive to provide is not alone sufficient to
31 demonstrate their impracticability.

32 (2) The amount of rent charged for dwellings in the
33 housing development seeking an exemption under this
34 section if the dwellings are rented, or the price of the
35 dwellings if they are offered for sale.

36 (3) The income range of the residents of the housing
37 development.

38 (4) The demand for housing for senior citizens in the
39 affected geographic area.

(5) The range of housing choices for senior citizens within the relevant geographic area.

(6) The availability of other similarly priced housing for senior citizens in the relevant geographic area. If similarly priced senior citizen housing with specially designed accommodations is reasonably available in the relevant geographic area, then the housing facility does not meet the requirements for exemption under this section.

(7) The vacancy rate of the housing development.

(d) Any person who resided in, occupied, or used the housing subject to this section prior to January 1, 1990, shall not be deprived of the right to continue that residency, occupancy, or use as the result of this section.

(e) This section shall not apply to the County of Riverside.

SEC. 5. Section 51.10 is added to the Civil Code, to read:

~~51.2.~~

51.10. (a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. A business establishment may establish and preserve housing for senior citizens, pursuant to Section ~~51.3~~ 51.11, except housing as to which Section ~~51.3~~ 51.11 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations against discrimination on the basis of familial status.

(b) This section is intended to clarify the holdings in *Marina Point, Ltd., v. Wolfson* (1982), 30 Cal. 3d 721, and *O'Connor v. Village Green Owners Association* (1983), 33 Cal. 3d 790.

~~SEC. 3. Section 51.3 of the Civil Code is repealed.~~

(c) This section shall only apply to the County of Riverside.

~~SEC. 4. Section 51.3~~

SEC. 6. Section 51.11 is added to the Civil Code, to read:

~~51.3.~~

1 51.11. (a) The Legislature finds and declares that this
2 section is essential to establish and preserve housing for
3 senior citizens. There are senior citizens who need special
4 living environments, and find that there is an inadequate
5 supply of this type of housing in the state.

6 (b) For the purposes of this section, the following
7 definitions apply:

8 (1) “Qualifying resident” or “senior citizen” means a
9 person 62 years of age or older, or 55 years of age or older
10 in a senior citizen housing development.

11 (2) “Qualified permanent resident” means ~~any of the~~
12 ~~following~~ a person who meets all of the following
13 requirements:

14 (A) Was residing with the qualifying resident or senior
15 citizen prior to the death, hospitalization, or other
16 prolonged absence of, or the dissolution of marriage with,
17 the qualifying resident or senior citizen.

18 (B) Was 45 years of age or older, or was a spouse,
19 cohabitant, or person providing primary physical or
20 economic support to the qualifying resident or senior
21 citizen.

22 (C) Has an ownership interest in, or is in expectation
23 of an ownership interest in, the dwelling unit within the
24 housing development that limits occupancy, residency,
25 or use on the basis of age.

26 (3) “*Qualified permanent resident*” also means a
27 *permanently physically or mentally impaired or*
28 *terminally ill adult who is a dependent child of the*
29 *qualifying resident, senior citizen, or qualified*
30 *permanent resident as defined in paragraph (2) of this*
31 *subdivision, unless the board of directors or other*
32 *governing body of the senior citizen housing*
33 *development determines that there are special*
34 *circumstances to disallow this particular dependent child*
35 *as a qualified permanent resident. Special circumstances*
36 *means a condition wherein this dependent child is or may*
37 *be harmful to himself or herself or others.*

38 (4) “Senior citizen housing development” means a
39 residential development developed *with more than 20*
40 *units* as a senior community by its developer, zoned as a

1 senior community by a local governmental entity, or
2 characterized as a senior community in its governing
3 documents, as these are defined in Section 1351, or
4 qualified as a senior community under the federal Fair
5 Housing Amendment Act of 1988, as amended.
6 Developments commenced after July 1, 1986, *and before*
7 *January 1, 1997*, shall be required to have been issued a
8 public report as a senior citizen housing development
9 under Section 11010.05 of the Business and Professions
10 Code. However, developments may elect to amend their
11 governing documents to become a senior citizen housing
12 development after the expiration date of the public
13 report.

14 ~~(4)~~

15 (5) “Dwelling unit” or “housing” means any
16 residential accommodation, ~~including a mobilehome~~
17 ~~located in a subdivision, cooperative, or condominium for~~
18 ~~mobilehomes, but not a mobilehome in a mobilehome~~
19 ~~park.~~

20 ~~(5) other than a mobilehome.~~

21 (6) “Cohabitant” refers to persons who live together
22 as husband and wife.

23 ~~(6)~~

24 (7) “Permitted health care resident” means a person
25 hired to provide live-in, long-term, or terminal health
26 care to a qualifying resident.

27 (c) The covenants, conditions, and restrictions or
28 other documents or written policy shall not limit
29 occupancy, residency, or use on the basis of age more
30 restrictively than to require that one person in residence
31 in each dwelling unit may be required to be a senior
32 citizen and that each other resident in the same dwelling
33 unit may be required to be a qualified permanent
34 resident *or permitted health care resident*.

35 (d) The covenants, conditions, and restrictions or
36 other documents or written policy shall permit
37 temporary residency, as a guest of a senior citizen or
38 qualified permanent resident, by a person of less than 55
39 years of age for periods of time, not more than 60 days in

1 any year, that are specified in the covenants, conditions,
2 and restrictions or other documents or written policy.

3 (e) Upon the death or dissolution of marriage, or upon
4 hospitalization, or other prolonged absence of the
5 qualifying resident, any qualified permanent resident
6 shall be entitled to continue his or her occupancy,
7 residency, or use of the dwelling unit as a permitted
8 resident.

9 (f) The covenants, conditions, and restrictions or other
10 documents or written policies applicable to any
11 condominium, stock cooperative, limited-equity housing
12 cooperative, planned development, or multiple-family
13 residential property that contained age restrictions on
14 January 1, 1984, shall be enforceable only to the extent
15 permitted by this section, notwithstanding lower age
16 restrictions contained in those documents or policies.

17 (g) Any person who has the right to reside in, occupy,
18 or use the housing or an unimproved lot subject to this
19 section on *or after* January 1, 1985, shall not be deprived
20 of the right to continue that residency, occupancy, or use
21 as the result of the enactment of this section.

22 ~~(h) A housing development may qualify under this~~
23 ~~section even though, as of January 1, 1997, (1) less than~~
24 ~~100 percent of the occupied units in the housing~~
25 ~~development are occupied by a qualifying resident,~~
26 ~~qualified permanent resident or permitted health care~~
27 ~~resident, provided that 100 percent of the units that~~
28 ~~become occupied after January 1, 1997, are occupied by~~
29 ~~qualifying residents, and other persons, if any, as are~~
30 ~~permitted by this section to reside in senior citizen~~
31 ~~housing, or (2) there are unoccupied units, provided that~~
32 ~~the units are reserved for qualifying residents, and other~~
33 ~~persons, if any, as are permitted by this section to reside~~
34 ~~in senior citizen housing. result of the enactment of this~~
35 ~~section by Senate Bill 2097 of the 1995–96 Regular Session.~~

36 *(h) A housing development may qualify as a senior*
37 *citizen housing development under this section even*
38 *though, as of January 1, 1997, it does not meet the*
39 *definition of a senior citizen housing development*
40 *specified in subdivision (b), if the development complies*

1 with that definition for every unit that becomes occupied
2 after January 1, 1997, and if the development was once
3 within that definition, and then became noncompliant
4 with the definition as the result of any one of the
5 following:

6 (1) The development was ordered by a court or a local,
7 state, or federal enforcement agency to allow persons
8 other than qualifying residents, qualified permanent
9 residents, or permitted health care residents to reside in
10 the development.

11 (2) The development received a notice of a pending
12 or proposed action in, or by, a court, or a local, state, or
13 federal enforcement agency, which action could have
14 resulted in the development being ordered by a court or
15 a state or federal enforcement agency to allow persons
16 other than qualifying residents, qualified permanent
17 residents, or permitted health care residents to reside in
18 the development.

19 (3) The development agreed to allow persons other
20 than qualifying residents, qualified permanent residents,
21 or permitted health care residents to reside in the
22 development by entering into a stipulation, conciliation
23 agreement, or settlement agreement with a local, state,
24 or federal enforcement agency or with a private party
25 who had filed, or indicated an intent to file, a complaint
26 against the development with a local, state, or federal
27 enforcement agency, or file an action in a court.

28 (4) The development allowed persons other than
29 qualifying residents, qualified permanent residents, or
30 permitted health care residents to reside in the
31 development on the advice of counsel in order to prevent
32 the possibility of an action being filed by a private party
33 or by a local, state, or federal enforcement agency.

34 (i) The covenants, conditions, and restrictions or other
35 documents or written policy of the senior citizen housing
36 development shall permit the occupancy of a dwelling
37 unit by a permitted health care resident during any
38 period that the person is actually providing live-in,
39 long-term, or hospice health care to a qualifying resident
40 for compensation.

~~(j) Local zoning ordinances establishing or approving the existence of senior citizens housing are not prohibited by this act. This provision is declaratory of existing laws.~~

~~(j) This section shall only apply to the County of Riverside.~~

~~SEC. 5. Section 51.4 of the Civil Code is repealed.~~

~~SEC. 6. Section 51.4~~

SEC. 7. Section 51.12 is added to the Civil Code, to read:

~~51.4.~~

51.12. (a) The Legislature finds and declares that the requirements for senior housing under Sections ~~51.2 and 51.3~~ 51.10 and 51.11 are more stringent than the requirements for that housing under the federal Fair Housing Amendments Act of 1988 (Public Law 100-430).

(b) Any person who resided in, occupied, or used the housing subject to ~~this section~~ Section 51.4 prior to January 1, 1990, shall not be deprived of the right to continue that residency, or occupancy, or use as the result of this section.

(c) This section shall only apply to the County of Riverside.

SEC. 8. The Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the Constitution due to the unique circumstances that, in the County of Riverside, there is an unusually large concentration of senior communities, and that those senior communities have been subject to an unusually large number of civil enforcement actions and litigation by private parties, notwithstanding the good faith beliefs of those communities that they were in compliance with the law. The Legislature therefore finds and declares that these unique circumstances justify making the provisions of Senate Bill 1097 of the 1995-96 Regular Session applicable only in the County of Riverside.